

MEMORANDUM OF LAW

DATE: July 11, 1991

TO: Tim O'Connell, Assistant to the Mayor

FROM: City Attorney

SUBJECT: Proposition 73 "Mass Mailing" Regulations/Request for Mayor's Signature on Rideshare Week Letter

This is in response to your memorandum of June 24, 1991, to City Attorney John Witt, in which you ask several questions pertaining to Proposition 73 "mass mailing" regulations and the proposed signature of the Mayor on a letter announcing "Rideshare Week" to be held in September 1991.

BACKGROUND FACTS

Most of the facts pertaining to the inquiry, including a copy of the text and format of the proposed letter announcing "Rideshare Week," were contained in a memorandum dated June 21, 1991, from John Turner, Senior Public Information Officer, Transportation Demand Management Division of the City's Engineering and Development Department, addressed to Alberta Martinez of the Mayor's office (copy of Mr. Turner's memo attached). Following receipt of your memo, I telephoned Mr. Turner to obtain more relevant facts. Mr. Turner informs me that the letter would be sent to approximately 2,000 persons in this City. There are no current plans to prepare or send a mayoral proclamation in lieu of or with this letter. It is the current intention that the entire cost of production, printing and distribution will be paid by private monies. The City will pay the costs of design of the letter, which amount to less than \$50.00 (essentially the cost of Mr. Turner's salary and fringe benefits for the time he spent composing the letter).

QUESTIONS PRESENTED

1. Would the use of the Mayor's letterhead and signature on such a letter be in violation of current Fair Political Practices Commission regulations and applicable statutes?
2. Would the use of a Mayoral Proclamation, including her signature, in substantially the same manner as the proposed letter be in violation?
3. Has an effort been made to inform the City's various public information officers of the applicable limitations upon the use of elected officials' photographs, names and letterhead?

ANALYSIS

The three questions you present raise issues under Government Code

section 89001 and its companion regulations adopted by the Fair Political Practices Commission ("FPPC"). Government Code section 89001 was adopted by California voters in June 1988 as part of Proposition 73 and as an amendment to the Political Reform Act (the "Act"). This Government Code section states: "No newsletter or mass mailing may be sent at public expense." The term "mass mailing" is defined elsewhere in the Act to read: "Mass mailing" means over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry." (Government Code section 82041.5).

The FPPC has fleshed out the meaning of these statutes in a lengthy regulation, a copy of which is attached (2 Cal. Code of Regulations 18901).

Answer to Question No. 1:

You first ask whether the proposal to send the Rideshare Week letter violates the mass mailing law. Mailing approximately 2,000 copies of the proposed letter would violate the law if public monies were used to do the production, printing and distribution since the proposed letter is to be signed by the Mayor and will be on the Mayor's letterhead stationery. 2 California Code of Regulations 18901(a). However, by telephone Mr. Turner clarified that the costs of production, printing and distribution of this letter will be paid entirely out of private funds. Therefore, we find that the proposal to mail approximately 2,000 of the proposed letters containing the Mayor's signature and on the Mayor's letterhead does not violate the "mass mailing" statute or regulations, since its printing, production and distribution are being paid totally out of private funds. The fact that less than \$50.00 of the City's money will be used to pay for the design of the letter does not make distribution of the letter a violation of Government Code section 89001 in the FPPC Regulation, since the regulation specifically allows less than \$50.00 of public monies to be spent on the design of a mass mailing. 2 Cal. Code of Regulations 18901(a)(3)(B).

Answer to Question No. 2:

In this question you ask about the legality of sending a proclamation (signed by the Mayor) as part of the Rideshare Week announcement. Since Mr. Turner informs us that no proclamation is currently planned, this question is moot. If, however, a Mayoral proclamation were sent, the same legal issue would be presented as the letter and the same legal guidelines should be followed.

Answer to Question No. 3:

You ask in question number 3 whether the City Attorney has informed other departments about the mass mailing regulations. The answer is "yes." On May 1, 1990, the City Attorney issued a report to the Mayor and City Council announcing the revised mass mailing regulations adopted by the FPPC. (Those regulations are still in effect.) Copies of the

report and regulations, along with a League of California Cities explanation of the regulations, were sent to the City Manager. The City Attorney believes it is appropriate to let the City Manager determine how the information is imparted to managerial departments. From the phone calls and other inquiries we have had over the past year, it is clear that the "mass mailing" regulations has been widely distributed throughout the City.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:011(x043.2)

Attachment

cc John Turner

ML-91-49